

2

# Child Pornography and its Legal Framework in India

– Adv. Prashant Mali

MSc. (Computer Science), LLB, LLM, PhD

President - Cyber Law Consulting (Advocates & Attorneys), Author & Speaker

 <https://orcid.org/0000-0002-4885-7447>  [prashant.mali@cyberlawconsulting.com](mailto:prashant.mali@cyberlawconsulting.com)

Child Sexual Abuse (CSA) is a widespread problem not only in India but all over the world. Children have always been vulnerable to victimization. Today, an estimated 10 million children are using the internet. With so many children online predators can easily find and exploit them. For predators, the Internet is a new, effective, and more anonymous way to seek out and groom children for sexual activity.

## Keywords

- Child Sexual Abuse
- predators
- Pornography
- IT Amendment Act
- Online Abuse
- cyber bullying
- online gaming
- online chats
- social media

## ARTICLE HISTORY

### Paper Nomenclature:

Case Based Study (CBS)

Paper Code: CYBNMV2N5MAY2020CBS1

Submission Online: 01-May-2020

Manuscript Acknowledged: 04-May-2020

Originality Check: 05-May-2020

Originality Test Ratio: 86% (Turnitin) Disclaimer

Peer Reviewers Comment: 10-May-2020

Blind Reviewers Remarks: 12-May-2020

Author Revert: 13-May-2020

Camera-Ready-Copy: 19-May-2020

Editorial Board Citation: 21-May-2020

Published Online First: 29-May-2020

## Introduction

Today networks of child abusers are proliferating worldwide. Child victimization on the internet is escalating at an alarming rate. Many children are being sexually exploited/solicited by individuals who are using the online services as their new playgrounds. The Information Technology Amendment Act 2008 was passed by the Indian Parliament in December 2008 and received Presidential assent in February 2009. The Amendment Act includes a new section 67B wherein electronically depicting children in sexually explicit acts, as well as abusing children online has been made an offence and punishment prescribed accordingly. A

new subsection 2 (ha) also extends the term 'computer network' to include 'communication device' which includes cell phones. There are many reasons for this increase, and some of these are discussed in this paper. Also analyzed in this paper how child pornography has increased and different cases taking place in India and their legal frame work in India.

### What is Online Abuse?

The word 'online' means all forms of information and communication technologies like the internet, mobile phones etc.

Online abuse is any type of abuse that happens on the internet. It can happen across any device that's connected to

the web, like computers, tablets and mobile phones. And it can happen anywhere online, including:

- social media
- text messages and messaging apps
- emails
- online chats
- online gaming
- live-streaming sites.

Current forms of child online abuse and exploitation include:

- **Cyberbullying:** emotional harassment, defamation and social exposure, intimidation, social exclusion

- **Online sexual abuse:** distribution of sexually explicit and violent content, sexual harassment
- **Online sexual exploitation:** production, distribution and use of child sexual abuse material (CSAM) (child pornography), “sextortion”, “revenge pornography”
- **Cyber extremism:** ideological indoctrination and recruitment, threats of extreme violence
- **Online commercial fraud:** identity theft, phishing, hacking, financial fraud
- **Habit formation and online enticement to illegal behaviours:** access to alcohol, cheating, plagiarism, gambling, drug trafficking, sexting and self-exposure
- **Grooming:** preparing a child, significant adults and the environment for sexual abuse and exploitation or ideological manipulation

Children can be at risk of online abuse from people they know or from strangers. It might be part of other abuse which is taking place offline, like bullying or grooming. Or the abuse might only happen online.

### Who is a Child?

The development index of a country depends on the quality of the Human Resource. Children are the future of this country and thus, there arises a greater responsibility on part of the state to ensure a proper development of children of this country. According to the United Nations Convention on Rights of the Child (UNCRC), “a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” This gives the various

countries freedom to fix the age limit in determining who is a child. In India after passing The Juvenile Justice (Care and Protection of Children) Act 2000, any person below the age of 18 is considered as a child as the mental state of adults and children are different; therefore there is a need to treat them separately under the different purview of law. And so there are different provisions in our legal system to ensure that children do not suffer any ailment due to prevalence of similar legal system<sup>1</sup>.

Child is also defined under the POCSO Act, 2012 in section 2 (d) “means any person below the age of eighteen years”<sup>2</sup>.

### Mental age of a person does not make him/her a “Child” under the POCSO Act.

In the case of *MS. EERA THROUGH DR. MANJULA KRIPPENDORF V. STATE (GOVT. OF NCT OF DELHI)*<sup>3</sup> The Court was hearing the appeal of a sexual assault victim suffering from Cerebral Palsy due to which though being a 38-year-old, her mental age is no more than 6-8 years. Refusing to expand the scope of the word ‘child’ under Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) to include the “mental age” of a person or the age determined by the prevalent science pertaining to psychiatry so that a mentally retarded person or an extremely intellectually challenged person who even has crossed the biological age of 18 years can be included within the holistic conception of the term “child”, the bench of Dipak Misra and R.F. Nariman, JJ held that the parliament has felt it appropriate that the definition of the term “age” by chronological age or biological age to be the safest yardstick than referring to a person having mental retardation.

### Meaning of Child Pornography

The literal meaning of the expression ‘Pornography’ is “relating or presentation sexual acts in arrange to cause sexual stimulation through books, films, etc.”

This would comprise pornographic websites; pornographic matter produced using computers & use of the internet to download & transmit pornographic videos, writings, pictures, photos, etc.

Adult entertainment is a major industry on the internet. There are more than 420 million human beings on pornographic web pages today.

According to the new definition under POCSO, child pornography is “any visual depiction of sexually explicit conduct involving a child which includes photograph, video, digital or computer generated image indistinguishable from an actual child and an image created, adapted or modified but appear to depict a child”.<sup>4</sup>

### Pornography or Obscenity A Debate

The literal meaning of pornography is ‘describing or exhibiting sexual acts in order to cause sexual excitement through books, films, etc. this in itself is cannot be termed as crime and had this been the case we should have banned Kamasutra and removed Raaslila of Lord Krishna from the course books altogether. But it is no so then where is the problem and the problem is not pornography but obscenity, pornography in its would not be a problem until it is obscene and detrimental to the decency.

The word ‘obscenity’ has been defined as ‘offensively or grossly indecent lewd law of publication intending to deprave and corrupt those who are likely to read, see, or hear the contents which clearly shows that this act is likely to cause criminal intent.

<sup>1</sup> Laws related to children in India (<https://www.ncib.in/pdf/child-law.pdf>)

<sup>2</sup> POCSO Act, 2012

<sup>3</sup> (2017) 15 SCC 133

<sup>4</sup> The Protection of Children from Sexual Offences Act, 2012 amended in 2019 [https://www.prsindia.org/sites/default/files/bill\\_files/Protection%20of%20Children%20from%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf](https://www.prsindia.org/sites/default/files/bill_files/Protection%20of%20Children%20from%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf)

The Supreme Court in the case of R.D.Udeshi Vs State of Maharashtra<sup>5</sup> held that what is obscene is the matter of question to be decided in each case. However, the apex court advocated that it was the duty of the court to consider the alleged obscene matter by taking an overall view of the entire work. It was further held that an overall view of the obscene matter in the setting of the whole work would of course be necessary but the obscene matter must be considered by itself and separately to find out whether it is gross and its obscenity is so decided, that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall.

**Who are Pedophiles and How are they A Threat?**

People with pedophilia are sexually attracted to children with prepubertal bodies (e.g. no pubic or underarm hair, small vagina, small penis, no or minimal breast development), who are generally not older than 11 years of age.

The issue of Pedophilia gained prominence in India only after the arrest of Freddy Peats in 1991. He was charged with forcing boys into homosexual activities and for possessing drugs and pornographic material. Freddy Peats who claims to be an Anglo-Indian has been a resident of Goa for over a decade.

Investigations, after his arrest, revealed that Peats had been operating a pedophile den where boys between 6-16 years were forced into prostitution catering mainly to German tourists.<sup>6</sup>

The National Women’s Commission has found that Bangalore is one of the five major cities, which supplies 80

percent of the child prostitutes in the country.

Based upon this finding, when the Karnataka State Commission for Women tried to investigate it further, they stumbled upon a major smuggling gang whereby girls from impoverished rural families were lured to Goa and pushed into the flesh trade. The coastal areas in Calangute, Candolim and Baga in Goa have been converted into a pedophiles’ paradise. Kovalam in Kerala, Mahabalipuram in Tamilnadu are also following in the same footsteps.

In October, 2019 the CBI has registered a case against seven Indians, who were allegedly part of an international WhatsApp group circulating and uploading child pornography. The FIR has been registered on the information shared by the German authorities, who had detected the online paedophile group.

In 2019, Gujarat’s crime investigation department has received at least 62 names of suspected pedophiles in the state suspects are believed to have downloaded, watched and shared child pornography on social media especially on what’s app.

**Why Was Pocso Formed?**

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November 2012 along with the Rules framed thereunder.

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

**Objectives of POCSO**

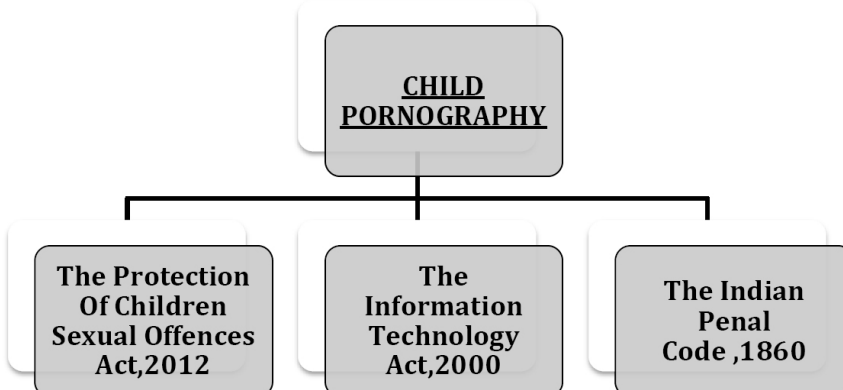
Firstly to protect children from the offences of:

- Sexual assault
- Sexual harassment
- Pornography

Secondly to establish special courts for speedy trials in such cases.

In the case of IN RE: ALARMING RISE IN THE NUMBER OF REPORTED CHILD RAPE INCIDENTS?

**Legal Framework in India**



<sup>5</sup> AIR 1965 SC 881

<sup>6</sup> State vs. Freddy Peats and Others, Sessions Case No. 24/1992. Cri Appeal No. 4/1996

<sup>7</sup> (2019) 8 SCC 300

Supreme court held that “we have deemed it proper to issue the following directions, which will be implemented by the Union of India and the State Governments forthwith:-

- (i) In each district of the country, if there are more than 100 cases under the POCSO Act, an exclusive/designated special Court will be set up, which will try no other offence except those under the POCSO Act.
- (ii) Such Courts will be set up under a Central scheme and will be funded by the Central Government, which fund will not only take care of the appointment of the Presiding Officer, but also the appointments of support persons, Special Public Prosecutors, Court staff and infrastructure including creation of child-friendly environment and vulnerable witness Court rooms, etc”.

According to NCRB’s 2016 report on cyber crimes in India, a total of 46 cases were registered for publishing material depicting children in a sexually explicit act<sup>8</sup>.

As per information provided by National Crime Records Bureau (NCRB), during the year 2016, the maximum number of cases registered under Section 14 and Section 15 of the POCSO Act, 2012 was in the State of Jharkhand.

Under Section 14 of the POCSO Act, 2012 whoever uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall be liable to fine. Further under Section 15 any person who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of

either description which may extend to three years or with fine or with both.

Further the Government has proposed amendment to POCSO Act, 2012 to introduce definition of Child pornography and punishment for storing, transmitting or using child pornography for commercial purposes inter-alia, so as to curb the trend of child pornography through online medium. The Protection of children from sexual offence (amendment) Bill is presently under consideration of the Parliament<sup>9</sup>.

In 2019 Amendment section 2(da) was added and even section 14 was also amended<sup>10</sup>.

### The Information Technology Act, 2000

Fearlooming large was whether section 67 of The Information Technology Act, 2000 would be effective or would be effective or would just remain a paper tiger? As it made only publishing or causing to be published any lascivious or prurient material in the electronic form a penal offence not accessing or viewing any pornographic or obscene electronic information has not been made a penal offence .

To overcome these lacuna subsection 67B was added which reads as follows;

67B Punishment for publishing or transmitting material depicting children in sexually explicit acts, etc., in electronic form. -Whoever-

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes,

exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

- (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- (d) facilitates abusing children online, or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form-

- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bona fide heritage or religious purposes.

Explanation. -For the purposes of this section “children” means a person who has not completed the age of 18 years<sup>11</sup>.

<sup>8</sup> NCRB Report 2016 (<http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>)

<sup>9</sup> Controlling Child-Porn Related Crimes (25 JUL 2019 3:57PM by PIB Delhi)

<sup>10</sup> Substituted by Act 25 of 2019 (<https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>)

<sup>11</sup> The Information Technology Act, 2000 (Amendment 2008)

Section 67B in The Information Technology Act, 2000 shall now make it an offence to publish or transmit material depicting children in sexually explicit acts in electronic form, and facilitating online child abuse. In section 67B, 'child sex abuse images' or 'child pornography' as it generally referred as, is not defined specifically. The act of making available electronic child pornography can be inferred from a combined reading of clauses (a) and (b). The term 'sexually-explicit' has not been defined, the collection of 'sexually-explicit' images of a child in electronic form is made an offence under clause (b) of section 67B, as recommended by the ICMEC study in 2008.

The status of the online child under the Information Technology Act Amendment has not been clarified. The 2008 ICMEC study specifies that the child involved in pornography is a victim, and should be treated regardless of whether he/she is a compliant victim or a non-cooperative witness. Both under the Immoral Trafficking Prevention Act and the Indian Penal Code, sexual exploitation of a child under 16 years of age in India is statutory rape (consent is immaterial), so the law should be interpreted to treat children under 16 years of age as victims in need of care and protection.

Unless the child is treated as a victim and given compassionate treatment by law enforcement authorities, it is doubtful whether parents will be willing to report online abuse to the authorities for fear of further victimization by the criminal justice system. On the other hand, it should be stressed that child offenders who actively abuse other children have to compulsorily be subject to the rehabilitative and reformatory treatment measures provided for in the Juvenile Justice (Care and Protection of Children) Act, 2006.

The Information Technology Act Amendment empowers police officers from the rank of Inspector upwards to investigate, enter and search public places without a warrant for evidence so as to facilitate speedy delivery of justice. The Indian police force has been equipped by the establishment of cyber police stations in various states to combat cyber crime. However, there is no mention in The Information Technology Act Amendment of a national cyber police wing to assist the CERT-In and to coordinate the state cyber police cells. As per international recommendations, abetment and attempt crimes are made punishable (sections 84B and 84C). The Information Technology Act Amendment has given due importance to the seriousness of electronic crimes against children, by attributing punishment that makes the offence under section 67B cognizable and non-bailable.

As per the proviso in section 77A, the Court shall not compound any offence where imprisonment exceeds three years. So an offence under section 67B is non-compoundable, too. Yet another safeguard that can be made applicable to child sexual abuse content is the section 66E of the The Information Technology Act Amendment which criminalizes the intentional or knowing capture, publishing or transmitting the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, in circumstances where a person can have a reasonable expectation that (i) he or she could disrobe in privacy, without being concerned that an image of his private area is being captured; or (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place. This protection of privacy is very relevant in cases of child sexual abuse images that are increasingly being captured on mobile cameras.

**Air Force Bal Bharti School Case :** In the first case of its kind, the Delhi Police Cyber Crime Cell registered a case under Section 67 of The Information Technology Act, 2000. In this case as reported a 16 year old boy of Air Force Bal Bharati School, a prominent school of Delhi, created a website at the URL [www.amazing-gents.8m.net](http://www.amazing-gents.8m.net), which provided details about the physical attributes and sexual preferences of a long list of girls and teachers at the school. This case was a famous one as the website did not contain any photographic material but only had text material which was allegedly obscene in nature.<sup>12</sup>

In the case of *Avnish Bajaj vs. State*<sup>13</sup> It involved an IIT Kharagpur student Ravi Raj, who placed on the baazee.com a listing offering an obscene MMS video clip for sale with the username alic-elec. Despite the fact that baazee.com has a filter for posting of objectionable content, the listing nevertheless took place with the description, "Item 27877408 – DPS Girls having fun!!! full video + Baazee points." The Crime Branch of Delhi police took cognizance of the matter and registered an FIR. Upon investigation, a charge sheet was filed showing Ravi Raj, Avnish Bajaj, the owner of the website and Sharat Digumarti, the person responsible for handling the content, as accused.

The court observed that "by not having appropriate filters that could have detected the words in the listing or the pornographic content of what was being offered for sale, the website ran a risk of having imputed to it the knowledge that such an object was in fact obscene", and thus it held that as per the strict liability imposed by Section 292, knowledge of the listing can be imputed to the company.

However, as far as Avnish Bajaj is concerned, the court held that since the

<sup>12</sup> Cyber Crimes and law by Dr. Amita Verma (2009)

<sup>13</sup> (2005) 3 CompLJ 364 Del

Indian Penal Code does not recognize the concept of an automatic criminal liability attaching to the director where the company is an accused, the petitioner can be discharged under Sections 292 and 294 of IPC, but not the other accused.

In the case of Unknown vs Narasimha<sup>14</sup> It was seen that in the absence of important proof of the attempt made by the Accused to Commit offence of Voyeurism by Capturing the image of the minor Victim and watched the same and caused Sexual Harassment, the Prosecution has failed to prove the alleged offences committed by the Accused under Section 354-C IPC and Sections 11(5), 12,13 and 18 of POCSO Act, 2012. Held, under Section 235(1) of Cr.P.C. Accused, Narasimha S/o. Ramaswamy is hereby acquitted for offences punishable under

Section 354-C IPC and Section 11(5), 12, 13, 18 of the POCSO Act, 2012.

### Information Technology Act Vis-À-Vis Indian Penal Code

Special law prevails over general law. IT Act being the special law and IPC being the general act, IT act prevails. The Information Technology (IT) Act, 2000 has adequate provisions to deal with prevailing cybercrimes. Section 67B of the Act specifically provides stringent punishment for publishing, browsing or transmitting child pornography in electronic form. Section 79 of the IT Act and The Information Technology (Intermediary Guidelines) Rules 2011 require that the intermediaries shall observe due diligence while discharging their duties and shall inform the users of computer resources to act accordingly. Further, sections 354A and 354D of Indian Penal Code provide punishment for cyber bullying and cyber stalking against women.

IT Act is a special act as it is said in section 81 of the act which reads as follows:

Act to have overriding effect.-“*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Provided that nothing contained in this act shall restrict any person from exercising any right conferred under the CopyRight Act, 1957 or the Patents Act, 1970(39 of 1970)*”.

In the case of Sharat Babu Digumarti v Government (NCT of Delhi)<sup>15</sup> The accused were charged with offences under Section 67 of the IT Act and Section 292 of the IPC. The question before the Supreme Court was whether the accused who was discharged under Section 67 of the IT Act could be prosecuted under Section 292 of IPC. Placing reliance on non-obstante provisions under Section 81 of the IT Act and Section 67A and 67B, it was held that charge under Section 292 could not survive. The decision was on the basis that Sections 67, 67A and 67B was a complete code regarding offence concerning publishing and transmitting obscene material in electronic form and non-obstante provision under Section 81 makes IT Act a special law that will prevail over the general law, IPC.

On 26 October 2018, a two-judge bench of the Bombay High Court vide its judgment in Gagan Harsh Sharma And Anr vs The State Of Maharashtra And Anr<sup>16</sup> held that when the offence is sufficiently covered under the provisions of the Information Technology Act, 2000 (IT Act), the IT Act will apply as *lex specialis* to the exclusion of the Indian penal code, 1860 (IPC). The Bombay High Court vide its judgment quashed and set

aside the First Information Report (FIR) insofar as the investigation into the offences punishable under the IPC were concerned, on the basis that the ingredients of offences alleged under IPC were the same as compared to the ingredients of the offences alleged to have been committed under IT Act.

In the case of Ajay Murlidhar Batheja vs The State Of Maharashtra And Anr<sup>17</sup> on 26 October 2018 the Bombay high court held “We are therefore not inclined to quash the said FIR as far as the offences under the Information Technology Act are concerned, however, we hold that the invocation and application of the provisions of the Indian Penal Code and specifically, Section 420, is not sustainable in light of the judgment Sharat Babu Digumarti v/s. Government (NCT of Delhi) (Supra)”.

Thus we can see that the provisions of this Act will prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Nevertheless, by virtue of new proviso the scope of the overriding effect shall not restrict any person from exercising any right conferred in Copy Rights Act, 1957 or the Patents Act, 1970. The idea behind the new proviso is to protect the rights of intellectual property rights holders under the Copyright Act or the Patents Act.

### Precautions taken by Indian Government

1. Government has taken a number of steps to be implemented by Internet Service Providers (ISPs) to protect children from sexual abuse online. These, inter-alia include:
  - Government blocks the websites containing extreme Child sexual Abuse

<sup>14</sup> SPECIAL C.C.No. 594/2014

<sup>15</sup> [(2017) 2 SCC 18]

<sup>16</sup> (Criminal Writ Petition No 4361 of 2018)

<sup>17</sup> (CRIMINAL APPLICATION NO.1217 OF 2018)

Material (CSAM) based on INTERPOL's "Worst-of-list" shared periodically by Central Bureau of Investigation (CBI) which is the National Nodal Agency for Interpol. The list is shared with the Department of Telecommunications (DoT), who then directs major ISPs to block such websites.

- Government ordered major ISPs in India to adopt and disable/remove the online CSAM dynamically based on Internet Watch Foundation (IWF), UK list.
  - The Ministry of Electronics and Information Technology (Meity) is implementing a major programme on Information Security Education and Awareness (ISEA). A dedicated website for information security awareness has also been set up<sup>18</sup>.
2. The Union Cabinet chaired by the Prime Minister Narendra Modi has approved the Memorandum of Understanding between India and the USA to access tipline reports on Missing and Exploited Children. The MoU has been signed between the National Crime Record Bureau (NCRB), India and the National Centre for Missing and Exploited Children (NCMEC), USA.

The MoU will provide access to more than one lakh tipline reports available with NCMEC, USA and enable law enforcement agencies in India. It will pave the way for setting up of an innovative mechanism for sharing information about child pornography and child sexual abuse material and taking legal action against offenders. It will further enable the law enforcement

agencies to remove child pornography and child sexual abuse material from cyber space, thereby enhance human dignity.<sup>19</sup>

3. Maharashtra Cyber wing, the nodal agency for the state's cyber security, has started an exercise named "Operation Blackface" to punish those involved in child pornography related activities.
4. CSAM is reported to the police Cybercrime Cell which seeks clearance from the Department of Telecommunications and from the Department of Electronics (DoT) and Information Technology (DEITY) to block sites containing illegal content.
5. The Central Bureau of Investigation (CBI) has a key role in the engagement with INTERPOL for keeping tabs on websites spreading child pornography. INTERPOL maintains a "worst of" list, which has details of such websites that can be used by authorities in India. Any request to block websites has to come through DEITY and not directly from CBI.
6. Social networking and messaging platforms and search engines such as Whatsapp, Facebook, Twitter, Instagram, Flickr, MySpace and Google block and report offensive and abusive material via filters, privacy settings and complaint mechanisms. Since 2011, social media platforms have been using the Photo DNA technology developed by Microsoft to scan every uploaded photo to control the distribution of CSAM. Search engines such as Google and Bing also block the search of illegal material and use splash pages to warn users when they are about to access illegal or harmful content.

7. To stop the sharing of illegal online material, collaborative mechanisms have been established between global Internet companies and law enforcement agencies such as the National Center for Missing and Exploited Children (United States), Child Exploitation and Online Protection Centre (CEOP) (United Kingdom), Internet Watch Foundation (IWF) (United Kingdom), INTERPOL and the Federal Bureau of Investigation (FBI) (United States).

### India and its International Status

- In addition to the constitutional and statutory framework, the police must also be aware of the international legal framework relating to child rights. The primary international instrument with respect to children is the United Nations Convention on the Rights of the Child [UNCRC] adopted by the UN General Assembly in 1989. The UNCRC was acceded by India in 1992 thereby effectively agreeing to give effect to all the norms and standards contained in the provisions of the Convention. India has also ratified two additional protocols to the UNCRC dealing with the sale of children, child prostitution and child pornography<sup>20</sup> and on children involved in armed conflict<sup>21</sup>. Article 1, UNCRC defines child to mean "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."
- On 26th April 2019, a Memorandum of Understanding (MoU), was signed between National Crime Records Bureau (NCRB) and National Centre for Missing and

<sup>18</sup> Ministry of Women and Child Development (25 JUL 2019 3:57PM by PIB Delhi)

<sup>19</sup> Cabinet approves MoU between India and USA to access tip line reports on Missing and Exploited Children (<https://pib.gov.in/PressReleaseFramePage.aspx?PRID=1566766>)

<sup>20</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002

<sup>21</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002 pornography, 2002

Exploited Children (NCMEC), USA to pave way for setting up an innovative mechanism for sharing information about child sexual abuse material as well as taking legal action against offenders.

### Banning Pornographic Websites: How Effective Can They Be?

There was outrage on social media as well as in mainstream media when the Government banned 857 websites in August 2015, following the Supreme Court's observation that "appropriate steps" were needed against pornographic sites, especially those featuring child pornography. DEITY asked the Department of Telecommunications (DoT) to

notify ISPs under the Information Technology Act to disable the sites. DoT relied on Section 79(3)(b) of the Information Technology Act to order the blocking of these sites. Section 79 lays down conditions under which ISPs or intermediaries are exempt from culpability for offensive content uploaded by a third party. It obligates the intermediaries to exercise "due diligence" and to act on the orders of the court or the Government and its agencies to qualify for immunity. The DoT order stated that the content hosted on porn sites related to morality and decency and therefore was subject to "reasonable restrictions" on the fundamental Right to Freedom of Speech and Expression<sup>22</sup>.

### Conclusion

In order to establish child online protection systems, adequate structures, coordination mechanisms, capacities and resources need to be established. Legislative frameworks and law enforcement are ineffective in the face of crimes and offences committed in the virtual world by people who live in other countries or continents.

We can see that child pornography is a violation of human rights. It is a degrading and demoralizing form of art that is done in a very poor taste. Measures need to be taken to erase all child pornography material on all the sites. This would serve to eliminate the exposure to children, which are the future of our nation.



**Advocate Prashant Mali** is an Internationally renowned Cyber Law, Cyber Security & Privacy Expert, Author & am Practicing Bombay High Court Lawyer based out of Mumbai, India . He is also Founder & President of the award winning premier technology Law Firm "Cyber Law Consulting ". He has trained Police Officers & Judges in various Police academies including National Police Academy & National Judicial Academy. He had been awarded by the hands of Soli Sorabjee as "Best Cyber Lawyer 2017" by India legal summit n Awards. In 2016 was awarded as "Cyber Security Lawyer of the year-India by Financial Monthly magazine of U K and in past was awarded as "Cyber Security & Cyber Law Lawyer of The Year:2014" by Indian National Bar Association. He is Masters in Computer Science & Masters in Law with certification in Computer Forensics & Systems Audit with working experience in the field of IT Security & Law for more than 20 Yrs. He has been interviewed by almost all National TV Channels and Quoted by leading Newspapers of India & abroad. He regularly writes for leading magazines and is a passionate speaker at National & International Seminars.He has authored 8 books on Cyber Crimes & Cyber Laws.

He is a legal adviser to Police, Govt Companies ,MNC's, Corporates and represents them in various courts. He has successfully argued and got decisions in landmark cyber cases as a legal counsel. He was invited by Oxford University to Present a paper on "Cyber Terrorism & International Law" and his abstract of Research paper namely " Defining Cyber Weapon A techno Legal perspective" was selected by NATO's Cyber Conflict Centre in Tallinn, Estonia and got published in IGI Journal. His PhD Research Interest is in Cyber warfare, Cyber Security, Cyber weapons and International Cyber Law. He is a passionate speaker and invited in many National and International Conferences as key note on topics like Electronic evidence, Cyber Laws, Cyber Insurance,Social Media, Block chain, Data Privacy, ecommerce, Cyber security policy & IPR. He is a Noted Chevening(UK) Cyber Security Fellow and Participant of IVLP (USA) in "Linking Digital Policy to Cyber Crime Enforcement". His clients include Shapoorji Pallonji, World Gold Council, Deloitte, Asian Paints, Aditya Birla Group, Mastek, NSDL, UTI, Life Insurance Council, various Banks & Insurance Companies including celebrities like Sunny Leone, Ram Gopal Verma, Tiger Shroff to Name a few.

 [prashant.mali@cyberlawconsulting.com](mailto:prashant.mali@cyberlawconsulting.com)

<sup>22</sup> By order no. 813-7/25/2011-DS (Vol.-V), DEITY asked DOT to notify ISPs to block access to 857 URLs, under the provision of Section 79(3)(b) of the Information Technology Act, 2000 as the content hosted on these websites relates to morality, decency as given in Article 19(2) of the Indian Constitution.



Annexure I

Submission Date: 01-May-2020 | Submission Id: 1378906932 | Word Count: 5043 | Character Count: 26345

ORIGINALITY REPORT

86% SIMILARITY INDEX | 83% INTERNET SOURCES | 24% PUBLICATIONS | 45% STUDENT PAPERS

PRIMARY SOURCES

1	unicef.in Internet Source	11%
2	pib.gov.in Internet Source	10%
3	cyberlawconsulting.blogspot.com Internet Source	9%
4	www2.warwick.ac.uk Internet Source	8%
5	www.asianlaws.org Internet Source	4%
6	www.harmanpublications.com Internet Source	4%
7	www.irenees.net Internet Source	3%
8	www.childrights.in Internet Source	3%
9	blog.sconline.com Internet Source	3%
10	bprd.nic.in Internet Source	3%
11	warwick.ac.uk Internet Source	3%
12	Submitted to Symbiosis International University Student Paper	2%
13	Verma, A.. "Cyber pornography in India and its implication on cyber cafe operators", Computer Law and Security Review: The International Journal of Technology and Practice, 201202 Publication	2%
14	www.scribd.com Internet Source	2%
15	studydaddy.com Internet Source	2%
16	www.greaterkashmir.com Internet Source	2%
17	springfield.uk.net Internet Source	2%
18	www.lawweb.in Internet Source	1%
19	Submitted to University of Florida Student Paper	1%
20	indiancaselaws.wordpress.com Internet Source	1%
21	ncrb.gov.in Internet Source	1%
22	Submitted to NALSAR University of Law Hyderabad Student Paper	1%
23	acadpubl.eu Internet Source	1%

21	ncrb.gov.in Internet Source	1%
22	Submitted to NALSAR University of Law Hyderabad Student Paper	1%
23	acadpubl.eu Internet Source	1%
24	ansumants.blogspot.com Internet Source	1%
25	www.dont-offend.org Internet Source	1%
26	www.sconline.com Internet Source	1%
27	Submitted to Pusan National University Library Student Paper	<1%
28	indiaforensic.com Internet Source	<1%
29	www.ijpediatrics.com Internet Source	<1%
30	www.prsindia.org Internet Source	<1%
31	loksabhaph.nic.in Internet Source	<1%
32	www.gktoday.in Internet Source	<1%
33	www.slideshare.net Internet Source	<1%
34	indiankanoon.org Internet Source	<1%
35	"The Palgrave Handbook of International Cybercrime and Cyberdeviance", Springer Science and Business Media LLC, 2020 Publication	<1%
36	Submitted to Hidayatullah National Law University, Raipur Student Paper	<1%
37	www.unicef.org Internet Source	<1%
38	Sonal Pandey, Sunita Reddy. "Understanding Child Sexual Abuse: Findings from an Ethnographic Research Among the Mothers in Delhi National Capital Region (India)", The Oriental Anthropologist: A Bi-annual International Journal of the Science of Man, 2020 Publication	<1%
39	ijtr.nic.in Internet Source	<1%
40	www.asthabharati.org Internet Source	<1%
41	www.ikigailaw.com Internet Source	<1%
42	eprints.qut.edu.au Internet Source	<1%

Note: The Cybernomics had used the turnitin plagiarism [https://www.turnitin.com/] tool to check the originality.



### Reviewers Comment

**Reviewer's Comment 1:** The Research work by the author clearly draws the fact on Child sexual Abuse. It depicted how these activities are encouraged through different sources with the internet as medium not only in India as well as abroad.

**Reviewer's Comment 2:** The study enlightened various measures taken by Indian law by banning those activities to be displayed online but it would have been better if the author would have pen down more about it.

**Reviewer's Comment 3:** The various case studies in the work are icing on the cake which helps in analysing the real scenario the country is going through.



### Editorial Excerpt

The article has 86% of plagiarism (disclaimer attached) which considered for publication on the basis of findings and the first had information collected related to this manuscript. Child pornography is not only a legal issue, but also a ethical issue as it has the tendency to adversely alter a child's perception of humanity. It has been earmarked finalized for publication under the category of **Case Base Study** (CBS).

### Acknowledgement

Author is indebted to entire editorial team of cybernomics for publishing the same.

### Disclaimer

The article published in a magazine cybernomics is an excerpt of my past published research floated in linkedin or from previous published blogs and are necessary to quote as and when required



### Citation

Advocate Prashant Mali  
"Child Pornography and its  
Legal Framework in India"  
Volume-2, Issue-5, May 2020.  
([www.cybernomics.in](http://www.cybernomics.in))

Frequency: Monthly, Published: 2020  
**Conflict of Interest:** Author of a Paper  
had no conflict neither financially  
nor academically.